

# Strategy Research Project

## JUST SAY YES: WINNING THE U.S. WAR ON DRUGS

BY

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USAWC STRATEGY RESEARCH PROJECT

**JUST SAY YES: WINNING THE U.S. WAR ON DRUGS**

by

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## **ABSTRACT**

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Despite spending \$50 billion annually, the current U.S. strategy for the war on drugs fails to meet its stated goal of reducing consumption of illegal drugs. This failure to reduce drug demand in the U.S. has led to increasing instability in Mexico, instability that impacts the U.S. through increased illegal immigration and violent crime. Arguably, the current U.S. strategy focuses a disproportionate amount of resources on drug supply and U.S. strategy should shift resources to target U.S. demand. This paper will examine how the U.S. could increase funding for treatment and modify current U.S. laws that completely prohibit drug possession and use. The new strategy would incorporate decriminalization of small amounts of illicit drugs and legalization of marijuana under strict guidelines in order to craft a policy that meets U.S. objectives of reducing overall drug consumption.

## JUST SAY YES: WINNING THE U.S. WAR ON DRUGS

### New U.S. Strategy Needed to Fight the War on Drugs

The U.S. is losing the war on drugs. This war began in 1973 when President Nixon created the Drug Enforcement Agency (DEA) and announced “an all-out global war on the drug menace.”<sup>1</sup> Over the past 40 years, the U.S. has spent over \$2.5 trillion dollars fighting the war on drugs and yet the U.S. has failed to make appreciable, measurable progress.<sup>2</sup> While there are several ways to measure progress, a RAND study offers statistics that show that “...total consumption of cocaine in the United States has remained at its mid-1980s peak for almost a decade.”<sup>3</sup> Failure to reduce overall consumption clearly marks failure when the stated objective of U.S. policy is to reduce consumption.

Additionally, according to a recent National Drug Threat Assessment, although the U.S. has been battling the war on drugs for several decades, the percentage of Americans using cocaine, heroin, crack, marijuana and methamphetamines has remained largely steady in recent years and the number of Americans using drugs has increased to 35 million.<sup>4</sup> The 2009 National Drug Control Strategy Annual Report states:

The global drug trade exacts a terrible toll on the American people, threatening their families, their finances, and their freedoms. The illicit drug trade also poses a serious threat to our national security due to its ability to destabilize and corrupt governments and to diminish public safety in regions vital to U.S. interests.<sup>5</sup>

America obviously has a drug problem and it's a problem with international as well as domestic implications. The U.S. must now determine what the optimal strategy is for

fighting the war on drugs. Current policy fails to achieve its objective; it's time to define and execute a new strategy with clear, achievable goals.

#### International Issues: Destabilization of Mexico

Suppliers from Central and South America meet America's demand for drugs and it is those suppliers that the U.S. has focused its anti-drug efforts on for the past forty years. This U.S. policy targeting drug supply has not achieved its intended purpose. When the U.S. helped Colombia attack its drug production, drug cartels moved north into Mexico where violence skyrocketed over the past few years.<sup>6</sup> Thus U.S. policy targeting drug trafficking in Colombia had the unintended consequence of destabilizing Mexico. The drug cartels even bought local police officers, driving the Mexican government to enlist the Army to assist in its fight against drugs.<sup>7</sup> Despite these extraordinary efforts, the Mexican government and Army do not appear to be making a dent in reducing drug-related violence in Mexico. If the Mexican government cannot provide domestic security to its citizens, the U.S. will have to deal with drug-related violence crossing the border and, ultimately, illegal immigration as Mexicans flee increasing violence. Violence and increased illegal immigration will negatively impact the U.S. economy and, potentially, local, state and national politics. Additionally, if these problems continue to escalate, Mexico may become a failed state. In order to help stabilize Mexico, the U.S. needs to find a viable approach to help relieve pressure on the Mexican government.

Over the past few years, the Mexican government has found itself increasingly embroiled in an escalating battle with more powerful drug cartels. In 2008, 6,290 people died in Mexico from drug-related violence.<sup>8</sup> In addition to murder, both kidnapping and armed robbery are on the rise in Mexico.<sup>9</sup> This excessive violence is

destabilizing Mexico as its citizens are becoming increasingly insecure. This sense of insecurity caused by the escalating violence may in turn cause Mexicans to lose confidence in their government and consequently view their government as losing its legitimacy. “Even though the majority of the those killed are people involved in the drug trade, the violence has come to affect the lives of both ordinary people who do not dare venture out of their houses at night (or even during the day) for fear of getting caught in the cross-fire, and of elites who have become targets of extortion.”<sup>10</sup> Additionally, the drug lords are not only killing military and law enforcement personnel, they are specifically targeting their family members and killing them in reprisal.<sup>11</sup> Drug violence causes fear every day in the lives of average Mexican citizens. Without some type of policy modifications to arrest escalating drug violence, the Mexican people will feel less and less secure as their government fails to provide them with a basic sense of protection. In fact, according to a 2008 poll in Mexico City’s *Reforma* newspaper, “53 percent of Mexicans think the government is losing the fight against the drug cartels.”<sup>12</sup> This failure of the Mexican government to provide physical security for its citizens will increase destabilization as many average Mexican citizens choose to leave Mexico and migrate to the U.S. because they do not feel secure in their own country.<sup>13</sup> Since the Mexicans don’t feel safe in their own homes, this may also increase their views that their government is losing its legitimacy. This lack of security is destabilizing Mexico with threats of both violent spillover into the U.S. and increasing illegal immigration.

In addition to the physical security risks caused by the drug violence in Mexico, this violence has also had a negative impact on Mexico’s economy. “Mexican states most significantly affected by violence appear to have begun experiencing reduced

economic activity in terms of reduced investment, tourism, and the dramatic escalation in transaction costs such as protection rents, ransoms, and costs of bodyguards.<sup>14</sup> For example, tourism provides jobs and income to many Mexican cities and towns and if drug violence continues to escalate, tourists may choose to avoid Mexico.<sup>15</sup> These second and third order effects of drug violence will negatively impact the overall Mexican economy and significantly contribute to Mexico's destabilization. If the Mexican economy continues to suffer, more Mexicans will likely flee, heading to the U.S. to try to find work. If a large enough influx of immigrants ensues, it will negatively impact the national security interests of the U.S. as border patrol and customs and immigration officers become overwhelmed with tracking illegal immigrants and trying to ensure they don't commit crimes, including terrorism, in the U.S.

Increasing crime in the U.S. due to Mexican drug cartel violence is already a reality. In the U.S. there has been a dramatic increase in murders and kidnappings of U.S. citizens, who either are, or their relatives are, caught up in the drug trade.<sup>16</sup> For example, the number of kidnappings in Phoenix, Arizona tripled from 48 in 2004 to 241 in 2008.<sup>17</sup> In addition, high-profile drug related kidnappings are on the rise. For instance, in November 2008, three armed men who were part of a Mexican drug smuggling operation disguised themselves as police officers and broke into a Las Vegas home. They tied up a mother and her boyfriend and abducted the mother's son. According to the authorities, these men were trying to recover drug money that was stolen by the child's grandfather.<sup>18</sup> The kidnapping of a young boy because his grandfather was apparently involved in should caution U.S. policy makers as to the

extent that these drug thugs are willing to go to jeopardize the safety and security of U.S. citizens.

In addition to kidnappings, drug trafficking organizations are increasingly widespread in the U.S. and causing a great deal of other violence in U.S. cities. According to U.S. law enforcement officials, Mexican drug cartels are increasingly penetrating cities deep in the U.S.<sup>19</sup> The U.S. Department of Justice National Drug Intelligence Center, in its 2009 *National Drug Threat Assessment*, states that “Mexican drug trafficking organizations represent the greatest organized crime threat to the United States. The influence of Mexican drug trafficking organizations over domestic drug trafficking is unrivaled.”<sup>20</sup> In fact, Mexican organizations involved in drug smuggling were identified in 82 U.S. cities in the Southwest, 44 cities from western Texas to Minneapolis, 43 cities from South Texas to Buffalo, New York, and 20 U.S. cities from San Diego to Seattle and Anchorage.<sup>21</sup> Not only are these located throughout the U.S., it is clear that these drug trafficking organizations do not leave their violent tactics at the Mexican border. In fact, in San Diego, members associated with one drug trafficking organization were connected with a dozen murders and 20 kidnappings over a three-year period.<sup>22</sup> These drug trafficking organizations fight over territory and drug turf wars are on the rise in major U.S. cities due to the disputed territories of drug trafficking organizations.<sup>23</sup> This increase in violence, based on the use and trafficking of illicit drugs, directly impacts U.S. citizens’ safety and security at home. Additionally, resources that U.S. cities and states must use to target and prosecute drug cartels are resources that cities and states cannot use for education, job training or other domestic priorities. U.S. failure to address the flaws in its current long-

term strategy will likely only exacerbate Mexico's problems leading to increasing threats to U.S. national security interests.<sup>24</sup>

The Department of Defense already recognizes the threat that increasing Mexican drug violence poses to U.S. national security. U.S. Joint Forces Command's 2008 *Joint Operating Environment* report states that, "in terms of worst-case scenarios, two large and important states are at risk of rapid and sudden collapse: Pakistan and Mexico."<sup>25</sup> If Mexico collapses, or even if it just continues down the road of becoming a failed state, this will have a direct negative impact on the U.S. In fact, in January of 2009, Michael Chertoff, the former secretary of the U.S. Department of Homeland Security, stated that, "...the department had developed contingency plans against significant spillover of drug violence or a surge of people trying to escape the drug violence in Mexico."<sup>26</sup> In addition to the burden that increased illegal immigration will place on the U.S., a failed Mexico increases the risk that Al Qaeda and other terrorist organizations may establish operating bases uncomfortably close to the American homeland. It would likely be much easier for Al Qaeda or other terrorists to conduct attacks against the U.S. if they simply needed to penetrate the long, porous U.S. border. For these reasons, Chertoff advised his successor, Janet Napolitano, that he had "put helping Mexico get control of its borders and its organized crime problems at the top of the list of national security concerns."<sup>27</sup> Clearly the U.S. needs to find ways to prevent Mexico's drug war from threatening the safety and security of U.S. citizens.

#### Domestic Issues: The Problems with Prohibition

Many of Mexico's problems stem from cartels fighting over profits available from supplying drugs to U.S. users. This black market economy is driven by two realities: the illegality of drugs in the U.S. and the certainty that some individuals will choose to

use mind and mood-altering substances. Hence many of the problems with drugs can be traced to prohibition. For the past several decades the U.S. strategy to fight the war on drugs has focused on prohibiting drug use and reducing the drug supply. This U.S. policy actually creates more problems than it solves because it fails to target the core of the problem, high demand for illicit drugs in America. The U.S. prohibition policy makes most drug use in the U.S. illegal, punishable by fines and incarceration. While the goal of the U.S. policy is to prevent all illegal drug use, many negative unintended consequences result from drug prohibition.

One can draw many parallels between the prohibition of alcohol in 1920's and the prohibition of drugs today. In fact, the same concerns that the American people had in their opposition against alcohol prohibition are the same ones that apply to drug prohibition today. Like alcohol prohibition, failed drug prohibition leads to many other problems such as overburdening the criminal justice system, heavy financial costs to the government, lack of regulation in the quality and potency of drugs being consumed, and increased public health concerns.

Consider the consequences of drug prohibition today: 500,000 people incarcerated in U.S. prisons and jails for nonviolent drug-law violations; 1.8 million drug arrests last year; tens of billions of taxpayer dollars expended annually to fund a drug war that 76% of Americans say has failed; millions now marked for life as former drug felons; many thousands dying each year from drug overdoses that have more to do with prohibitionist policies than the drugs themselves, and tens of thousands more needless infected with AIDS and Hepatitis C because those same policies undermine and block responsible public health policies.<sup>28</sup>

Drug prohibition, like alcohol prohibition, seems to create more, or at least as many, problems than it solves.

One of the biggest flaws of the drug prohibition policies deals with the costs, economic and other, of incarceration. Drug prohibition laws lead to an overburdening of

the prison system resulting in heavy taxpayer expense. Because of drug prohibition, many otherwise law abiding citizens are convicted of crimes when they choose to use drugs recreationally. “Enforcing marijuana prohibition costs taxpayers an estimated \$10 billion annually and results in the arrest of more than 847,000 individuals per year - - far more than the total number of arrestees for all violent crimes combined, including murder, rape, robbery, and aggravated assault.”<sup>29</sup> This is both expensive and it overburdens the criminal justice system that should focus on arresting people for crimes that violate the rights of other citizens. “Nonviolent drug offenders make up 58 percent of the federal prison population, a population that is extremely costly to maintain. In 1990, the states alone paid \$12 billion, or \$16,000 per prisoner.”<sup>30</sup> Do we really want to spend taxpayer money locking people up for smoking marijuana? John Stuart Mill once said, “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant.”<sup>31</sup> Therefore, it seems a better use of these limited resources would be to focus them on locking up criminals who commit in violent crimes against other people such as rape and murder.

Like alcohol prohibition, drug prohibition also leads to a lack of regulation in the quality and potency of the drugs being consumed. During alcohol prohibition, people began consuming alcohol that was more potent because it was easier to produce than beer or wine.<sup>32</sup> The same is true for drug prohibition. When the government does not play a role in regulating drugs because they simply make drugs “off limits,” it is left up to individual drug dealers to determine the quality and potency of the drugs on the market. The consumer is then purchasing and using drugs that could be more potent than they

expected. "Consequently, street drugs are often contaminated or extremely potent, causing disease and sometimes death to those who use them."<sup>33</sup> Therefore, by taking this hard line "off limits" approach to drugs, the U.S. is actually empowering drug dealers with the responsibility of determining the quality and potency of drugs being made available to consumers in the U.S.

Drug prohibition laws also lead to public health concerns. First and foremost, because of the fear of criminal prosecution, drug users are not likely to seek treatment for their addictions. Second, they are more likely to take risks that they would not normally take. The best example of this is the use of dirty needles. Total prohibition forces drug users to share dirty needles because needles are hard to obtain and drug users want to keep their secrets hidden to avoid fines and/or incarceration. By sharing these un-sterilized needles, drug users needlessly transmit deadly communicable diseases such as HIV.<sup>34</sup> "In New York City, more than 60 percent of intravenous drug users are HIV positive. By contrast, the figure is less than one percent in Liverpool, England, where clean needles are easily available."<sup>35</sup> Therefore, taking this hard line "off limits" approach to drug use leads to the second and third order negative effects of spreading communicable diseases, increasing health care costs especially for the uninsured, and discouraging drug users from seeking treatment.

#### Recommendation One: Focus on Reducing Demand

The best way for the U.S. to help Mexico in its battle with the drug cartels would be for the U.S. to reduce the demand that fuels the drug industry in Mexico. At its foundation, the drug trade is about simple economic principles of supply and demand. Thus far, in order to prevent the spread of illicit drugs, the U.S. has mostly focused its efforts and resources on reducing the supply of drugs. A better strategy would be to

focus on reducing the demand for illicit drugs in the U.S. In fact, the Mexican government stated: "...U.S. failure to curb drug demand limits its [the Mexican governments] ability to crack down on drug trafficking."<sup>36</sup> Therefore, instead of targeting supply, the U.S. needs to change its strategy to focus on reducing the demand for illicit drugs. Reducing demand will also help the U.S. to address the domestic concerns that illicit drug use causes.

Problems stemming from narcotic production and trafficking don't end at the Mexican border. The current U.S. approach fails to balance U.S. policy to effectively attack both supply and demand. The emphasis on supply funnels the bulk of resources to supply programs, limiting the amount of resources available for preventative programs or treatment which would help to reduce demand. The imbalance in both focus and resources means that the U.S. fails to achieve its primary objective in the war on drugs: reducing drug use in the U.S.

Current U.S. National Drug Control Strategy is guided by three national priorities: stopping initiation; reducing drug abuse addiction; and disrupting the market for illegal drugs.<sup>37</sup> In order of resource priority, though, disrupting the market for illegal drugs has always enjoyed the greatest amount of funding. In order to achieve overall success, the U.S. needs to focus resources toward stopping the initiation of drug use and reducing addiction which, in turn, should reduce drug demand. Reducing drug demand will ultimately result in reduced supply. When the market for black and white TVs dried up, the supply dried up in a corresponding manner. Even though it may seem counter-intuitive, the U.S. needs to target demand to reduce supply.

In targeting demand, the U.S. will not be able to increase the overall war on drugs budget. The current economic crisis coupled with continued conflict in Iraq and Afghanistan precludes increasing funding for the war on drugs. Instead, the Obama Administration can shift funding from programs focused on reducing supply to programs focused on increasing treatment which will lead to reduced demand.

A RAND Corporation study offers one policy prescription for shifting funding. RAND conducted a study on cocaine-control programs, analyzing procedures that affect the supply and demand of illicit drugs in the U.S. and exploring strategies that would optimize results in terms of lowering illicit drug consumption, yet remain cost-effective. While the data in this report specifically references cocaine-control programs, RAND makes the argument that these results can be used to project similar conclusions for other illicit drugs such as heroin and marijuana.<sup>38</sup> While one may not be able to precisely correlate RAND's study to other drugs, one can extrapolate the overall findings. For instance, RAND's finding that users in rehabilitation don't use drugs, thus reducing overall demand, holds true for whatever type of drug user is in rehabilitation.<sup>39</sup>

The RAND report addresses three programs for targeting supply and one for reducing demand. The U.S. spends approximately \$13 billion yearly on these four programs. The U.S. spends 7% on source-country control which funds cocaine leaf destruction and seizure of cocaine products in producing countries. The U.S. spends 13% on Coast Guard, Customs and other government agency interdiction of products in transit. The U.S. spends 73% on domestic enforcement, targeting, arresting and incarcerating drug dealers and users. Finally, the U.S. spends a mere 7% on treatment,

the one program that targets demand, which encompasses funding for outpatient and residential programs.<sup>40</sup>

Despite spending over \$12 billion yearly on targeting supply channels, total cocaine consumption in the U.S. has remained steady since the mid-1980s. While the number of light users declined, the amount of cocaine ingested by heavy users increased which results in the steadily high level of U.S. cocaine consumption.<sup>41</sup> In order to reduce consumption, the U.S. needs to adopt a different policy.

The RAND study proposal that offers the best projected results for reducing demand without increasing costs involves shifting 25% of the supply control budget to treatment and treating 100% of heavy users each year. The RAND study projects implementing this program would decrease consumption by 103 metric tons of cocaine per year, using consumption numbers based on current U.S. policies as baseline. While this program is relatively funding-neutral, a reduction of only \$0.3 billion yearly, RAND projects that overall societal costs would drop by approximately \$10 billion. While difficult to quantify, the drop in costs to society caused by this policy change involve reduced crime, due to lower numbers of drug users committing crimes to obtain drug money, and increased productivity, in the form of fewer Americans going to work high. Thus RAND projects that shifting funding would save the U.S. \$10.3 billion yearly.<sup>42</sup>

While shifting funding offers the possibility of decreasing drug use without increasing demands on the federal budget, this initiative will not appeal to everyone. Congress may support this initiative in order to increase U.S. success in the war on drugs. This approach may also appeal to the American public since it would reduce the

consumption of illicit drugs in the U.S. while not increasing the U.S. funding to fight the war on drugs. However, governors and mayors will likely oppose it despite the potential benefits of reduced court and incarceration costs, due to the fear of appearing soft on crime. Federal, state and local law enforcement organizations will also likely resist this change in policy since a 25% budget reduction in domestic enforcement programs will negatively impact their overall budgets. No one wants to give up real funding in anticipation of potential future savings. However, along with a reduction in budget, law enforcement will be able to shift resources from pursuing non-violent small users of marijuana to targeting violent criminals such as rapists or murderers. While no one wants to look soft on any crime, most people would rather spend tax dollars incarcerating violent criminals than jailing non-violent individuals who occasionally use small amounts of marijuana. There is no “one size fits all” approach to the war on drugs that will appeal to everyone. However, shifting resources to more effectively target demand provides a solution that will, without increasing the federal budget, decrease drug use in the U.S., reduce court and incarceration costs, and allow law enforcement organizations to focus their limited resources toward fighting violent crime.

#### Recommendation Two: Repeal Prohibition (Again)

In addition to significantly changing policy regarding resource distribution, the U.S. should consider significant policy changes on drug prohibition. The U.S. should change current laws to focus on regulation rather than criminalization. Prohibition fails because people will use drugs whether they are legal or not, just as they continued to use alcohol during its prohibition.

The desire to take mood-altering substances is an enduring feature of human societies worldwide and even the most draconian legislation has failed to extinguish this desire - - for every substance banned another will

be discovered, and all are likely to have some ill effect on health. This should be borne in mind by social legislators who, disapproving of other people's indulgences, seek to make them illegal. Such legislation does not get rid of the problem; it merely shifts it elsewhere.<sup>43</sup>

By continuing the current U.S. policy prohibiting drug use, especially prohibiting marijuana, the U.S. ignores human nature and fails to develop policies that may lead to more desirable outcomes.

In order to achieve more desirable outcomes in the war on drugs, the U.S. should allow history to influence policy decisions. Examining U.S. history clearly demonstrates that prohibition did not work when it came to alcohol. In fact, the prohibition of alcohol led to increased crime among individual citizens as well as to an increase of organized crime as black markets for alcohol emerged. In addition, the legal prohibition of alcohol did not stop people from consuming alcohol; in fact they actually consumed more potent types of alcohol that led to greater health problems. "During the alcohol prohibition in the 1920's, bootleggers marketed small bottles of 100-plus proof liquor because they were easier to conceal than were large, unwieldy kegs of beer."<sup>44</sup> As a result, instead of drinking beer and wine, which had lower alcohol content, people drank stronger types of alcohol because they were more readily available. Drinking more potent forms of alcohol led to higher rates of liver cirrhosis, rates that actually went down after prohibition was repealed because people went back to drinking less potent alcoholic beverages such as beer and wine.<sup>45</sup>

Thus alcohol prohibition in the 1920's did not stop the use of alcohol, it merely pushed it underground. Instead of people openly consuming alcohol, and paying taxes on what they consumed, people simply consumed alcohol privately. Prohibition of alcohol failed to meet its objective of reducing demand. People still found a way to

obtain alcohol, and by making it illegal, the government ended up devoting resources to enforcing the prohibition of alcohol as well as losing out on the benefits it could have gained from regulating and taxing alcohol. Alcohol prohibition clearly did not achieve its intended goal of reducing or eliminating alcohol use in the U.S.

Because they saw it as a failed policy, many Americans opposed prohibition.

Some opponents of prohibition pointed to Al Capone and increasing crime, violence and corruption. Others were troubled by the labeling of tens of millions of Americans as criminals, overflowing prisons, and the consequent broadening of disrespect for the law. Americans were disquieted by dangerous expansions of federal police powers, encroachments on individual liberties, increasing government expenditure devoted to enforcing the prohibition laws, and the billions in forgone tax revenues. And still others were disturbed by the specter of so many citizens blinded, paralyzed and killed by poisonous moonshine and industrial alcohol.<sup>46</sup>

Therefore, after only 15 years, the American public pushed to repeal prohibition.

Ultimately, “the evils of failed suppression far outweighed the evils of alcohol consumption.”<sup>47</sup> Thus the 21<sup>st</sup> Amendment repealed the 18<sup>th</sup> Amendment, the only Amendment to the U.S. Constitution ever repealed, ending U.S. prohibition of alcohol.

Alcohol prohibition failed and, recognizing its failure, the U.S. changed its laws. The U.S. should now consider changing its drug prohibition laws. In 1933, when the U.S. repealed the prohibition on alcohol, “most states immediately replaced criminal bans with laws regulating the quality, potency and commercial sales of alcohol; as a result, the harms associated with alcohol prohibition disappeared.”<sup>48</sup> If the U.S. made similar changes to the drug prohibition laws, the results would be similar. So, if prohibition is not the answer, what is? The answer may lie in the decriminalization or legalization of drugs in the U.S.

Instead of prohibiting the use of illicit drugs, the U.S. should consider the legalization or decriminalization of drugs. Think of the problem like a Chinese finger stick. The more one tries to force his or her way out of the situation, by pulling his or her fingers tighter and tighter apart, the worse the situation becomes. Almost counter-intuitively, only by pushing his or her fingers together, seemingly relinquishing control, will one manage to pull his or her fingers out of the finger stick. In a similar manner, the U.S. needs to relinquish some control over drug use in order to have a chance to reduce demand. By legalizing marijuana and decriminalizing small amounts of illicit drugs, the U.S. can move some resources away from law enforcement and incarceration and focus these resources towards treatment.

#### Recommendation Three: Adopt the Portugal Model

If legalization proves untenable to U.S. politicians because it appears too soft on crime, the U.S. could adopt the Portugal model which focuses exclusively on decriminalizing the personal use and possession of drugs.<sup>49</sup> Data from a study examining the impact of Portugal's policy change describes two primary benefits stemming from the decriminalization of possession, for personal use, of small amounts of drugs. First, decriminalization has not increased drug use. To the contrary, the data shows that "decriminalization has had no adverse effect on drug usage rates in Portugal," which "in numerous categories are now among the lowest in the European Union."<sup>50</sup> In fact, the rate of heroin abusers dropped from 45% prior to decriminalization to 17% now. In addition, since decriminalization, Portugal has one of the lowest lifetime usage rates for cannabis in all of Europe.<sup>51</sup> Second, decriminalizing personal use and possession of drugs encourages more drug users to receive treatment. When personal drug use was a criminal offense in Portugal, drug users had no incentive to report their

drug use for fear of obtaining a criminal record. This fear served as a barrier to seeking treatment for their addictions. Drug possession and personal usage are now considered administrative offenses rather than criminal offenses. By eliminating the fear of prosecution, drug abusers are therefore encouraged to seek treatment.

So instead of wasting money by throwing drug users in jail, decriminalization resulted in an increase in addicts registering for drug treatment programs. Portugal ensured an increase in drug treatment by requiring individuals caught with small amounts of drugs to appear before a “dissuasion commission” consisting of psychiatrists, social workers and legal advisors. These commissions can impose administrative fines and require individuals to participate in community service. They can also recommend treatment and by doing so they de-stigmatize treatment by making personal drug use an administrative rather than criminal offense, which in turn increased the number of individuals attending treatment. In fact, “the number of addicts registered in drug-substitution programmes has risen from 6,000 in 1999 to over 24,000 in 2008.”<sup>52</sup> By encouraging drug abusers to seek treatment; the Portuguese government has successfully decreased the demand for illicit drugs in Portugal. If the U.S. adopted a similar decriminalization policy, it would likely have a similar positive impact by decreasing demand.

Some might argue that decriminalization would make the Obama Administration look “soft on crime.” However decriminalization does not mean that all possession of illicit drugs would be legal. Large-scale drug possession, possession with intent to distribute for instance, is still illegal in Portugal, but “nobody carrying anything considered to be less than a ten-day personal supply of drugs can be arrested,

sentenced to jail or given a criminal record.”<sup>53</sup> Thus the government can still target, arrest, prosecute and incarcerate drug dealers to reduce the drug problem but it does not take on the expense of targeting and incarceration for small-scale users who don’t belong in jail.

In addition to decriminalizing small amounts of illicit drugs, the U.S. may also choose to legalize some drugs such as marijuana in order to generate tax revenues that the U.S. can then use to fund drug treatment programs. In the U.S., marijuana is the drug that is most popular after alcohol and tobacco.<sup>54</sup> Even though it remains largely illegal, except for some limited medicinal purposes in some states, “approximately 25 million Americans have smoked marijuana in the past year, and more than 14 million do so regularly despite harsh laws against its use.”<sup>55</sup> Does it make sense to continue to make marijuana illegal if so many Americans are going to use it anyway? The fact of the matter is, there is a growing trend towards legalizing marijuana for medical purposes, as several U.S. states have already begun to do.<sup>56</sup> Therefore, instead of prohibiting marijuana, it makes more sense for the U.S. to regulate its use through legalization or decriminalization. In addition, by regulating it, the government will gain tax revenues from sales that can fund treatment programs, thereby reducing demand. Specifically, studies show that users don’t use drugs when in treatment so merely making treatment available to more users will likely reduce overall drug demand. While some addicts may return to drug use after treatment, others will not. And most users in treatment refrain from taking drugs. By making more treatment available, even funding multiple treatments for individuals, drug use will go down, at least while the users are in treatment.

Although some conservative politicians and pundits may find this change in strategy unthinkable, others may realize that the cost of total drug prohibition is too high.

Prohibition is a drain on the public purse. Federal, state and local governments spend roughly \$44 billion per year to enforce drug prohibition. These same governments forego roughly \$33 billion per year in tax revenue there could collect from legalized drugs, assuming these were taxed at rates similar to those on alcohol and tobacco.<sup>57</sup>

Re-examining and ultimately changing current prohibition policy is the only way to make progress in the war on drugs since clearly prohibition does not achieve the U.S. stated objectives.

By decriminalizing certain small amounts of illicit drugs for personal use and by legalizing other drugs such as marijuana, the U.S. could not only lower the demand for illicit drugs and encourage treatment, but the U.S. could also gain tax revenue to help fund this treatment. In addition, by enacting decriminalization laws as Portugal has done, drug users in America may have an incentive to seek treatment. Instead, under current U.S. policy, users have a disincentive to seek treatment due to the stigma of having a criminal record if they admit to illegal drug use. Finally, not only will the U.S. gain funding through tax revenues, but the U.S. will also save funding through decreased expenditures for prosecution and incarceration of small-scale, personal use drug abusers.

This radical policy change may not appeal to the Obama Administration, which is focused on the economy, health care, and the wars in Iraq and Afghanistan. As a matter of fact, President Obama has publicly stated that he intends to retain the current “no tolerance” anti-drug laws. Additionally, while federal, state, and local government officials may be happy about increased tax revenues, they will not want the perception of being soft on crime or being perceived as “saying yes to drugs.” Thus new policy

could create a perception among the American people that the Obama Administration, and other levels of government, are sending the wrong message to children – the message that it's ok to use small amounts of drugs. Few parents actually want their children to use illicit drugs, even in small amounts. Decriminalizing drugs, even small amounts, would also require the government to establish drug testing policies for different workers such as mass transit operators, doctors, nurses and others for whom even small amounts of drug usage could cause harm to others. However, as described throughout this paper, the potential benefits appear to outweigh the potential disadvantages.

### Conclusion

Many experts recognize the shortfalls in current U.S. drug policy and strongly advocate change.

Retired Orange County Superior Court Judge James Gray, a longtime proponent of [marijuana] legalization, estimates that legalizing pot and thus ceasing to arrest, prosecute and imprison nonviolent offenders could save the state \$1 billion a year. "We couldn't make this drug any more available if we tried," he says. ". . . [A]long with glamorizing it by making it illegal, . . . we also have the crime and corruption that go along with it." He adds, "Unfortunately, every society in the history of mankind has had some form of mind-altering, sometimes addictive substances to use, to misuse, abuse or get addicted to. Get used to it. They're here to stay. So let's try to reduce those harms, and right now we couldn't do it worse if we tried.<sup>58</sup>

As Judge Gray implies, the current U.S. strategy to fight the war on drugs fails to meet its goals. Despite spending \$50 billion yearly to reduce drug consumption, a stated goal of U.S. drug policy, the percentage of Americans using the most common illegal drugs remains steady, which means that as the population increases, actual consumption increases making the U.S. the world's leader in illegal drug use.<sup>59</sup> Now is the time for the U.S. to end its failed strategy that focuses on drug prohibition and reducing supply.

Instead, the U.S. must shift focus to reducing demand, reversing prohibition, and adopting policies that legalize and/or decriminalize the use of illicit drugs.

Failure to shift focus will likely mean that the current policy continues to produce the same results: rising drug consumption in the U.S. Maintaining the current focus will also fail to reduce the crime and corruption associated with illegal drug production and distribution. Additionally, unless the U.S. can implement policies that reduce drug consumption, the U.S. runs the risk of contributing to increasing government destabilization in Mexico, leading to loss of legitimacy, which may ultimately result in a failed state. The U.S. cannot afford a failed state on its southern border because of the national security implications to include significantly increased illegal immigration and the possibility of terrorists using a failed Mexico as a base to plan and conduct terrorist attacks against the U.S.

Thus the status quo is untenable, if only because the U.S. cannot afford to continue to spend at the current level with no appreciable return on its investment. If the U.S. continues with the current policy, it will continue to merely tread water domestically and the U.S. will face continued, and probably escalating, violence from an increasingly unstable Mexico. The U.S. should implement policy changes, to include shifting resources from drug interdiction to drug treatment, decriminalizing small amounts of illegal drugs, and passing laws that legalize marijuana under strict guidelines so that states can benefit from tax revenues from marijuana sales. Implementing these innovative policy changes could significantly reduce U.S. drug consumption while simultaneously allowing law enforcement to focus on more violent

crimes and garnering revenue for cash-strapped state governments. The current policy does not work; it is time to try something new.

## Endnotes

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